

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2011-000532-001 DT

10/17/2011

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT  
H. Beal  
Deputy

STATE OF ARIZONA

SETH W PETERSON

v.

AMIR BOZANI AKHLAGHI (001)

CAMERON A MORGAN

REMAND DESK-LCA-CCC  
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

**Lower Court Case Number M-0751-CR-2010-023467.**

Defendant-Appellant Amir Akhlaghi (Defendant) was convicted in Phoenix Municipal Court of disobeying an order of the court. Defendant contends the order of the court was vague and the evidence was not sufficient to support the conviction. For the following reasons, this Court affirms the judgment and sentence imposed.

**I. FACTUAL BACKGROUND.**

Defendant was charged by complaint with disobeying an order of the court. (R.T. of Apr. 7, 2011, at 4.) Golnaz Asadi testified she was Defendant's estranged wife, and they were still married. (*Id.* at 6-7.) They had two children in common. (*Id.* at 7.) On May 10, 2010, she filed for an order of protection against Defendant, which was issued by the Scottsdale City Court and served on Defendant. (*Id.* at 7-9.) Defendant was aware of the order of protection, and it precluded Defendant from having any contact with Ms. Asadi. (*Id.* at 9, 11.) Ms. Asadi had discussed with Defendant that she was thinking of having the judge vacate the order of protection so they could have contact with each other and attend counseling. (*Id.* at 15-17.) The order of protection was, however, still in effect at the time Defendant came to Ms. Asadi's home, and Defendant knew it was still in effect. (*Id.* at 22.)

On July 26, 2010, Ms. Asadi was living in Scottsdale, and at 7:00 p.m., Defendant came to her home in order to see the children. (R.T. of Apr. 7, 2011, at 9-10.) When Defendant arrived, he had a conversation with Ms. Asadi. (*Id.* at 20-21, 23.) While Defendant was at Ms. Asadi's home, an officer arrived to serve Defendant with an order of protection obtained by someone other than Ms. Asadi. (*Id.* at 11-12.) When the officer found Defendant at Ms. Asadi's home, he arrested him for violating the order of protection Ms. Asadi had obtained. (*Id.* at 12-13, 18.)

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Officer Ryan Boesen testified he was dispatched to Ms. Asadi's home on July 26, 2010, to serve an order of protection on Defendant. (R.T. of Apr. 7, 2011, at 24–25.) He knew there was another order of protection in place precluding Defendant from having any contact with Ms. Asadi. (*Id.* at 25.) When Officer Boesen discussed the order of protection with Defendant, Defendant acknowledged he knew there was an order of protection in place against him. (*Id.* at 30.)

After testimony and arguments, the trial court found Defendant guilty. (R.T. of Apr. 7, 2011, at 39.) The trial court suspended imposition of sentence and placed Defendant on unsupervised with a fine. (*Id.* at 40–41.) On April 21, 2011, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES.

A. *Did Defendant present to the trial court a claim the word “contact” in the order of protection was vague.*

Defendant contends the word “contact” in the order of protection was vague. Absent fundamental error, failure to raise an issue at trial waives the right to raise the issue on appeal. *State v. Gendron*, 168 Ariz. 153, 154, 812 P.2d 626, 627 (1991); *State v. Gatliff*, 209 Ariz. 362, 102 P.3d 981, ¶ 9 (Ct. App. 2004). Fundamental error is limited to those rare cases involving error going to the foundation of the defendant's case, error that takes from the defendant a right essential to the defendant's defense, and error of such magnitude that the defendant could not possibly have received a fair trial, and places the burden on the defendant to show both error existed and the defendant was prejudiced by the error. *State v. Soliz*, 223 Ariz. 116, 219 P.3d 1045, ¶ 11 (2009).

In the present case, Defendant never present to the trial court a claim the word “contact” in the order of protection was vague, thus Defendant is entitled to relief on appeal only if he can establish error occurred and he was prejudiced by any error. The order of protection provided Defendant was not to have contact with a particular person, Golnaz Asadi. “Contact” is defined as the “union or junction of surfaces” and “a condition or an instance of meeting, connecting, or communicating.” *Merriam Webster's Third New International Dictionary (Unabridged)* at 490 (1961). The order of protection was therefore clear enough to advise Defendant that he was prohibited from talking to Ms. Asadi.

Moreover, Defendant has failed to establish prejudice. Defendant never made any claim in the record he did not understand what the word “contact” meant. Defendant therefore is not entitled to relief on this issue.

In support of his position, Defendant cites *State v. Martin*, 171 Ariz. 159, 829 P.2d 349 (Ct. App. 1992). In response, the State cites *State v. Kessler*, 199 Ariz. 83, 13 P.3d 1200 (Ct. App. 2000), and *State v. Maggio*, 196 Ariz. 321, 996 P.2d 122 (Ct. App. 2000). Each of these cases dealt with a condition of probation providing the defendant have no contact with children. Because those cases dealt with no contact with children in general while the current case deals with no contact with a named individual, this Court does not find those cases controlling.

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B. *Was the evidence sufficient to support the verdict.*

Defendant contends the evidence was not sufficient to support the verdict. In addressing the issue of the sufficiency of the evidence, the Arizona Supreme Court has said the following:

We review a sufficiency of the evidence claim by determining “whether substantial evidence supports the jury’s finding, viewing the facts in the light most favorable to sustaining the jury verdict.” Substantial evidence is proof that “reasonable persons could accept as adequate . . . to support a conclusion of defendant’s guilt beyond a reasonable doubt.” We resolve any conflicting evidence “in favor of sustaining the verdict.”

*State v. Bearup*, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009) (citations omitted). When considering whether a verdict is contrary to the evidence, this court does not consider whether it would reach the same conclusion as the trier-of-fact, but whether there is a complete absence of probative facts to support its conclusion. *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988). In the present case, the evidence presented showed there was an order of protection in place, the order of protection precluded Defendant from having contact with Golinaz Asadi, Defendant knew there was an order of protection in place, and Defendant talked with Ms. Asadi. The evidence was thus sufficient to support the verdict.

III. CONCLUSION.

Based on the foregoing, this Court concludes Defendant failed to present to the trial court any claim the order of protections was vague, and further concludes the evidence was sufficient to support the verdict.

**IT IS THEREFORE ORDERED** affirming the judgment and sentence of the Phoenix Municipal Court.

**IT IS FURTHER ORDERED** remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings.

**IT IS FURTHER ORDERED** signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen  
THE HON. CRANE MCCLENNEN  
JUDGE OF THE SUPERIOR COURT

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